IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 26827 of 2001

Between:

G.Komuraiah, S/o.Yellaiah, aged 58 years,

Accountant (Retd.), Karimnagar District Cooperative Central Bank Ltd.,

R/o. H.No.6-6-692, Sivajinagar, Karimnagar.

..... PETITIONER

AND

1. Person Incharge/Management of The Karimnagar District Cooperative

Central Bank Limited, Karimnagar, Karimnagar District.

2. The General manager, Karimnagar District Cooperative Central Bank Limited,

Karimnagar.

3. The Commissioner for Cooperation & Registrar of Cooperative Societies,

A.P., Gruhakalpa, M.J. Road, Hyderabad.

4. Managing Director/Member Secretary, A.P. State Cooprative Bank Ltd.,

Troop Bazar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction, preferably one in the nature of Writ of Mandamus, declaring the action of the respondents-1 to 4 in not paying the salaries for the period from 13.05.2000 till 30.9.2001, the date of superannuation and not settling the retirement benefits of the petitioner, as illegal, arbitrary, discriminatory, violative of Articles-14, 16 and 21 of the Constitution of India; and consequently

direct the respondents herein to pay the salaries from 13.05.2000 to 30.9.2001 and finalise the retirement benefits of the petitioner and pay the same to the petitioner together with interest at the rate of 18% per annum from the date of his retirement till the date of payment of the same to the petitioner.

Counsel for the Petitioner:MR.P.MEHAR SRINIVASA RAO

Counsel for the Respondents 1 &2: MR. P.M.GOPALA RAO

Counsel for the Respondents 3 & 4: GP FOR COOPERATION

The Court made the following :

HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO.26827 OF 2001

ORDER

Declaring the action of the respondents 1 to 4 in not paying the salaries from 13.05.2000 till 30.9.2001, the date of superannuation and not settling the retirement benefits of the petitioner, as illegal and arbitrary, and with consequential direction to the respondents to pay the salaries from 13.5.2000 to 30.9.2001 and finalise the retirement benefits of the petitioner, the present writ petition is filed.

The brief facts that are necessary for disposal of this writ petition may be stated as follows:

The petitioner was appointed as Supervisor Clerk in Karimnagar District Cooperative Central Bank Ltd., on 10.8.1966 and promoted to the higher posts from time to time and on 30.9.2001 he retired from service as Accountant. While working as Accountant at Choppadandi Branch, the petitioner was placed under suspension basing on the report of the branch manager, dated 15.5.1996, with effect from 20.5.1996 and on 29.5.1998 as many as 13 charges were framed against the petitioner. Challenging the same, the petitioner filed W.P.No.20556 of 1998 before this Court, but the same was dismissed on 3.8.1998 on the ground that the matter was only at the stage of charge memo. Later, the enquiry officer submitted his report stating that the charges levelled against the petitioner were proved, basing on which, the second respondent issued a show-cause notice, dated 25.6.1999 for recovery of a sum of Rs.2,79,920-84 ps. and also calling upon the petitioner to show cause as to why he shall not be dismissed from service. Petitioner submitted his explanations on 5.7.1999 and on 16.7.1999 and ultimately, by order, dated 2.5.2000 he was reinstated to duty by effecting reversion to a lower cadre post i.e. Staff Assistant from Accountant with a direction for recovery of sum of Rs.1,33,226-59 ps.

towards loss of interest on credit balance. The petitioner joined duty on 13.5.2000 that cadre in pursuance of the reinstatement order dated 2.5.2000. Thereafter, the petitioner filed an appeal before the first respondent, but the same was dismissed on 9.1.2001. As against the same, the petitioner preferred a review before the first respondent and the first respondent by order, dated 15.3.2001 alleged to have stayed the recovery of the amount, but, in spite of the same, the second respondent has not paid any salary to the petitioner from 13.5.2000 onwards. Through proceedings, dated 31.8.2001 the second respondent permitted the petitioner to retire from service on his attaining the age of superannuation. Even after retirement, in spite of several requests of the petitioner, the second respondent has not chosen to finalise the retirement benefits. Hence, the writ petition.

A counter affidavit has been filed on behalf of respondents 1 and 2 denying the allegations made by the petitioner. It is stated that since serious allegations are levelled against the petitioner with regard to the financial irregularities and illegalities, he was kept under suspension from 20.5.1996 pending departmental enquiry. In pursuance of the report of the enquiry officer, dated 6.2.1999 holding the petitioner guilty of charges, a show cause notice was issued to him on 25.6.1999 calling for his explanation as to why he should not be dismissed from the service and why an amount of Rs.2,79,920-84 ps. should not be recovered from him. Later, by proceedings, dated 2.5.2000 the petitioner was imposed with penalty of reversion from category IV to V and the period of suspension was treated as privileged leave and extraordinary leave. The petitioner was further directed to make good an amount aggregating to Rs.1,33,226-59 ps. with interest t 18% per annum, failing which, the bank would recover the same from the salary of the petitioner. The petitioner joined the duty in category V from 13.5.2000 and as he failed to pay the said amount, his salary in the category V was withheld from 13.5.2000 to 30.9.2001, on which date he retired from service. The appeal preferred by the petitioner to the Board i.e. Managing Committee was dismissed vide proceedings, dated 9.1.2001 and it became final. It is stated that there is no provision in the Bye-laws of the bank of the respondents or in the settlement, dated 15.6.1997 for review and hence, the revision is not maintainable. It is stated that the alleged order, dated 15.3.2001 staying the recovery of the amount is not available with the respondents. It is further stated that the respondents considered the case of the petitioner for payment of salary and they found that the petitioner is still liable to refund an amount of Rs.10,758-89 ps. to the

bank.

Learned counsel appearing for the petitioner contended that no proceedings are pending against the petitioner either under Sections 60, 71 or 70-B of the A.P. Co-operative Societies Act, 7 of 1964 and without any justifiable cause, the respondents did not pay the salary for the period, for which, the petitioner worked and also they have not finalized the retirement benefits of the petitioner and in case of similarly situated person, the first respondent directed to release the retirement benefits and therefore, there is a discrimination. He contends that even the enquiry officer did not recommend for recovery of any amounts from the petitioner and hence, he pleads to allow the writ petition.

On the other hand, learned counsel appearing for the respondents contended that the Deputy Registrar of Cooperative Societies, Karimnagar District has passed the surcharge order on 16.12.1998 against the petitioner for recovery of Rs.3,01,888-49 ps. together with interest, but that amount has not been paid. As the petitioner was due an amount of Rs.5,28,081-89 ps., the salary claimed by him and other retirement benefits have not been paid and thus still the petitioner himself is liable to pay an amount of Rs.10,758-89 ps. to the respondents and therefore, there are absolutely no grounds to allow the writ petition.

For certain irregularities said to have been committed by the petitioner, a charge memo, containing 13 charges, was issued against the petitioner on 29.5.1998. The enquiry officer submitted his report stating that all the charges levelled against the petitioner were held proved. Thereupon, the second respondent issued a show-cause notice dated 25.6.1999 calling upon the petitioner to show-cause as to why an amount of Rs.2,79,920-84 ps. should not be recovered from him and why he should not be dismissed from service, for which, the petitioner gave an explanation. However, by order, dated 2.5.2000 the petitioner was reinstated to duty by effecting reversion to the lower cadre post i.e. Staff Assistant. He was further directed to make good an amount aggregating to Rs.1,33,226-59 ps. together with interest. Thereupon, the petitioner joined the duty in the cadre V from 13.5.2000. As the petitioner failed to pay the amount as ordered, his salary in the cadre V was withheld from 13.5.2000 to 30.9.2001, on which date, he retired from service. Challenging the same, the petitioner preferred an appeal before the Board i.e. Managing Committee, against the punishment order, dated 2.5.2000. The Board after considering the appeal, dismissed it on 9.1.2001 and it has become final. Thereupon, the petitioner

preferred a review before the first respondent on various grounds. By order, dated 15.3.2001 the first respondent granted interim order staying recovery of amount at present and ordered that the enquiry may for the finding of the facts by the bank officers with reference to the bank proceedings, dated 2.5.2000. In spite of the interim orders of the first respondent, the second respondent withheld the salaries payable to the petitioner. It is not forthcoming under what provisions of law or under what rule or regulation, the review petition was filed before the first respondent and hence, in the absence of any provision or regulation, entertaining of review petition by the first respondent is unwarranted. In the counter affidavit, the respondents stated that the interim order, dated 15.3.2001 staying the recovery of the amount, is not available in the office records. So, in the absence of any provision, even if there is any order of stay of recovery, the same cannot be given effect to in view of the fact that the second respondent's order was confirmed by the Managing Committee i.e. Board. The grievance of the petitioner is that after reinstatement from 13.5.2000 till 30.9.2001, the date of superannuation, he was not being paid the salaries and that his retirement benefits have not been settled so far.

The stand taken by the respondents in not paying the salaries and retirement benefits is that on consideration of the case of the petitioner, it was found that the petitioner himself was still liable to refund of an amount of Rs.10,758-89 ps. and therefore, for that reason no amount was paid to the petitioner. In the counter affidavit the statement of accounts is furnished, as per which, the amount payable to the petitioner towards eligible salary, gratuity, encashment of leave and provident fund, is Rs.5,17,323-00 ps. Whereas, the amounts recoverable from the petitioner towards subsistence allowance, eligible leave period, surcharge amount with interest and loans due to the bank, comes to Rs.5,28,081-89 ps. Therefore, still the petitioner is liable to pay an amount of Rs.10,758-89 ps. to the respondents. Hence, withholding of salaries and retirement benefits by the respondents cannot be said to be arbitrary or illegal. The disciplinary authority came to the conclusion that the petitioner should make good an amount aggregating to Rs.1,33,226-59 ps. within a period of one month together with interest thereon at 18 per cent per annum from the date of occurrence of transaction till the date of remittance, failing which, the bank would recover the same from the salaries without any further notice. However, learned counsel for the petitioner contended that the petitioner was relieved from the liability

as per the enquiry conducted by the Deputy Registrar of Cooperative Societies/Divisional Cooperative Officer, Karimnagar and therefore, he is not liable to pay any amount, but this Court is unable to accept the same for the reason that even though in the surcharge proceedings, dated 16.12.1998 under Section 60 of the A.P. Cooperative Societies Act 7 of 1964, no liability is fixed on the petitioner, subsequently the disciplinary authority by virtue of its proceedings, dated 2.5.2000 directed the petitioner to pay an amount of Rs.1,33,226-59 ps. together with interest and that order has become final.

As seen from the statement of accounts, the eligible salary from 13.5.2000 to 30.9.2001, gratuity for 20 months, encashment of leave salary for 46 days, and provident fund contribution of the bank have not been paid to the petitioner because the respondents-Bank is entitled to recovery certain amounts from the petitioner i.e. subsistence allowance paid from 20.5.1996 to 12.5.2000, the amount granted towards eligible leave period for 167 days, and the surcharge amount. In view of the above, the action of the respondents in withholding the salary of the petitioner from 13.5.2000 to 30.9.2001 and in not settling the retirement benefits cannot be said to be illegal or arbitrary. Further, it is not brought to the notice of this Court that the respondents have violated any statutory rule or regulation in withholding the salary and in not settling the retirement benefits. The fact that the petitioner has to pay certain sums, as stated in the counter affidavit, has not been denied or disputed by filing a reply affidavit. No rule or regulation is brought to the notice of this Court to show that the gratuity and leave salary of the petitioner cannot be withheld after retirement. Under any stretch of imagination it cannot be said that the action of the respondents is arbitrary and illegal. Since no statutory violation was shown or established, this Court is of the opinion that the writ petition is devoid of merits and is liable to be dismissed.

The writ petition is accordingly dismissed leaving open to the petitioner all the remedies available under the law. No order as to costs.

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K.C.BHANU, J

08th JULY, 2005

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To

1. The Person Incharge/Management of The Karimnagar District Cooperative

Central Bank Limited, Karimnagar, Karimnagar District.

2. The General manager, Karimnagar District Cooperative Central Bank Limited,

Karimnagar.

3. The Commissioner for Cooperation & Registrar of Cooperative Societies,

A.P., Gruhakalpa, M.J. Road, Hyderabad.

4. The Managing Director/Member Secretary, A.P. State Cooprative Bank Ltd.,

Troop Bazar, Hyderabad.

5. Two C.Cs to G.P. for Cooperation, High Court Buildings, Hyderabad (OUT)

6. Two C.D. copies.